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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,715	03/14/2001	Bowie G. Keefer	6454-58227	5818

7590 08/04/2004

KLARQUIST SPARKMAN CAMPBELL
LEIGH & WHINSTON, LLP
One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, OR 97204

EXAMINER

LE, HOA VAN

ART UNIT	PAPER NUMBER
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1752

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/808,715	KEEFER ET AL.	
	Examiner	Art Unit	
	Hoa V. Le	1752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-36, 39-40, 42-44, 46, 51-52, 82-85, 92-93, 101, 104-105 and 113-116 is/are pending in the application.
- 4a) Of the above claim(s) 92, 93, 101, 104, 105 and 113-116 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33-36, 39-40, 42-43, 46, 51-52 and 82-85 with claim 82 being broadest is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 92-93, 101, 104-105, 113-116 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>26 July 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

This is in response to Election filed on 26 July 2004.

A. Applicants point out some errors in the Office action mailed on 22 June 2004.

The record shows that there are many Groups of the inventions as urged, many amendments, and many groups of claims. They are invited for errors and mistakes. Therefore, the restriction should and must be done to simplify the issues and tasks for a proper examination as clearly pointed out and set forth on the record.

B. Applicants elect the invention of Group I containing many groups of claims 33-36, 39-40, 42-44, 46, 51-51 and 82-85 with claim 82 being broadest with traverse being acknowledged.

This invention is considered, searched and examined only as clearly pointed out and set forth on the record.

C. The restriction is corrected as followed:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. The groups of claims (33-36, 39-40, 42-44, 46 and 51-52) and (82-85) with claims 82 being broadest, drawn to an electrical current generating system, classified in class 429, at least subclass 14. It was not independently considered or searched as a patentably different or distinct invention on the record.

II. ---

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III. The groups of claims (104-105), (113) and (114-116) with claims (113) being broadest, drawn to an electrical current generating system, classified in class 429, subclass 34. It claims 113 was independently considered and searched in only. No gas purification apparatus, processing steps, technology or area has been considered or searched since there were many issues and tasks to be handled as one on the record.

Inventions Group I and Group III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process as broadly claimed in claims 113 can be practiced another materially different apparatus of using a single adsorbing equipment and no combined gas stream as required in the instant process evidence can be seen in the broadest apparatus claim 82. Applicant should show or provide an evidence to the contrary. In the absence of convincing evidence, the restriction would not be removed.

Because these inventions are distinct for the reasons given above and have acquired the separate status and searches in the art and can be supported the separate patents as divided by applicants and have no evidence of the record that are not required the separate consideration and search since they are the obvious variants because the prior art being applied to one of them would be sufficient against all inventions, restriction for examination purposes as indicated is proper. Applicant should show or

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provide an evidence to the contrary. In the absence of convincing evidence, the restriction would not be removed.

D. Applicant's election with traverse of the invention of Group I in the reply filed on 26 July 2004 is acknowledged. The traversal is on the ground(s) that both of the apparatus and the process claims are required the use of a rotary pressure swing adsorption equipment. This is not found persuasive because there is not that all claims are required the same adsorption equipments as urged but other equipments could be used. Evidence can be seen in at least claim 113. Applicant should show or provide an evidence to the contrary. In the absence of convincing evidence, the restriction would not be removed.

The requirement is still deemed proper and is therefore made FINAL.

E. Applicants urge that the independent and complete considerations, searches and applying of the references for more than one of the above patentably different or distinct inventions would be no serious burden. It was not done. It is disagreed since an additional consideration or search for more than one invention is burdensome, lacking of focusing and diluting a patentability of the claims for an overly handle many issues, tasks and inventions as one. It is now notified for the record as urged.

F. This application contains many groups of claims drawn to an invention nonelected with traverse in the reply filed on 26 July 2004. A complete reply to the final rejection must include

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cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

G. The applied 09/780,184 and 09/780,079 are withdrawn because the instant application has an early priority date.

H. The applied 10/286,400 is withdrawn because the instant application has an early filing date.

I. The following is an examiner's statement of reasons for allowance:

(1) The applied reference (English translation as submitted) of JP 62278770 disclose, teach and suggest the use of a pressure swing adsorption or (PSA) but not a rotary pressure swing adsorption or (PSA) as urged by applicants.

(2) For a rotary pressure swing adsorption or (PSA), Keefer et al (6,051,050 6,056,804 6,451,095 2003/0070550) and WO 99/01202 are cited to show the state of the art.

(3) The elected invention of Group I, claims (33-36, 39-40, 42-44, 46 and 51-52) and (82-85) with claims 82 being broadest has been considered, searched and found to be allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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J. This application is in condition for allowance except for the following formal matters:

(1) The elected invention of Group I, claims (33-36, 39-40, 42-44, 46 and 51-52) and (82-85) with claims 82 being broadest has been considered, searched and found to be allowable.

(2) Applicants are requested to cancel all claims of the non-elected inventions of Groups II and III to put the instant application in a condition for an allowance.

Prosecution on the merits is closed in accordance with the practice under *Ex parte*

Quayle, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

K. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoa V. Le whose telephone number is 571-272-1332.

The examiner can normally be reached from 6:30 AM to 4:00 PM on Monday through Thursday and about the same time of most Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on 571-272-1526.

Applicants may file a paper by (1) fax with a central facsimile receiving number 703-872-9306,

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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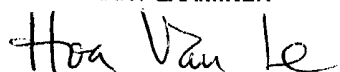
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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hoa V. Le
Primary Examiner
Art Unit 1752

HVL
03 August 2004

HOA VAN LE
PRIMARY EXAMINER

A handwritten signature in black ink that reads "Hoa Van Le". The signature is written in a cursive, flowing style.